

Water Policy Interim Committee  
March 11, 2010  
**MUNICIPAL WATER RIGHTS**

WHAT IS A MUNICIPAL RIGHT?

- A municipal water right is the type of water right that encompasses the purposes traditionally served by a city or town, such as: domestic, commercial, industrial, water for public buildings and cemeteries, irrigation of parks, fire, dust abatement, etc.
- The type of water right is defined by the character of the use not the applicant or holder of the water right.
- Not just for municipalities or towns.
- All kinds of entities hold “municipal water rights.”
  - Pre-July 1, 1973 Water Right Claims for “municipal” use: Individuals; Home Owners Associations; Private Water Companies; Irrigation Companies/Districts; Railroad Companies; Religious Organizations; Other Companies/Organizations; School Districts; Governmental Agencies.
  - Post-July 1, 1973 Permits for “municipal” use: Religious Organizations; Home Owners Associations; Water User Associations; Private Water Companies; Other Companies/Organizations; School Districts; Governmental Agencies; Individuals; Water and Sewer Districts

NO MUNICIPAL PREFERENCE - There is no preference in Montana among uses. All are subject to the priority system, first in time, first in right. For example, a municipal right could be called before an irrigation right if the irrigation right has a senior priority date.

MUNICIPALITIES HAVE OPTIONS TO ADDRESS GROWTH

- Water reservation system under §85-2-316, MCA allowed public entities to acquire water for future growth. A statewide reservation process was undertaken in the early 1990s. Some areas are still open for reservations, such as the area encompassing Missoula.
- Permit
- Municipalities can purchase water rights (ex city of Bozeman has purchased irrigation rights as far back as 1980s and acquired shares in state reservoir projects)
- Condemn water rights

GROWING CITIES DOCTRINE – Certain states like Colorado have the “growing cities doctrine,” which allows cities of a certain size to “grow” into their paper water rights. The doctrine recognizes that cities grow and allows them to expand their water use over time.

- Montana doesn’t have this doctrine. Beneficial use is the basis, measure and the limit of the water right. Appropriators have the right to stream conditions substantially as when they came onto the stream.